

APPLICANT:
Timothy J. Martin

REQUEST: Variance to permit a shed
within the required front yard setback

HEARING DATE: October 29, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5616

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Timothy J. Martin

LOCATION: 404 Carrollton Court, Forest Hill
Tax Map: 41 / Grid: 2A / Parcel: 649 / Lot: 11
Election District: Third (3rd)

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-26C(4) of the Harford County Code, to allow a shed to be located within the required front yard in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant Timothy Martin described his property as an approximately 1/3 acre triangular-shaped parcel, improved by a 45 foot by 20 foot ranch type dwelling, with a deck and sunroom. The parcel has road frontage on Carrollton Court (on which the house actually fronts), Water Tower Drive, and Bynum Road.

The Applicant wishes to erect a 12 foot by 16 foot storage shed in his back yard which is a front yard for setback purposes as it abuts Bynum Road. This portion of the parcel is, however, actually considered by the Applicant as his back yard and is used as such. The proposed shed will be approximately 11 feet from the rear lot line on Bynum Road. Of course, a 40 foot front yard setback requirement exists off Bynum Road, which means the shed will be located approximately 29 feet into the setback. Accordingly, this request for variance is made.

A review of the site plan, marked as Attachment 4 to the Staff Report, shows that the rear corner of the house actually is exactly 40 feet from Bynum Road, and there is little available space located within the rear yard of the property in which to locate a shed due to the impact of the various front yard setback requirements. The Applicant believes that the proposed site is the most appropriate.

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The Applicant stated that the shed will match in color and design that of the existing home. The shed will not be on a permanent foundation.

The Applicant notes that no objection has been expressed from any neighbor.

The Applicant, however, also requests he be allowed to locate the shed approximately 4 feet from his westerly property line, which is his left lot line as one were to stand in front of his house on Carrollton Court. That portion of the Applicant's lot is encumbered by a 7.5 foot County Drainage and Utility Easement. The Applicant wishes to encroach upon that easement by about 3.5 feet, and accordingly requests this additional variance.

In support of the variance to encroach upon the County Drainage and Utility Easement the Applicant stated that, without this variance, the shed would be required to be located almost immediately next to an existing, mature, maple tree in his backyard. While the shed could nevertheless be located outside the Drainage and Utility Easement, the Applicant's preference is that he be allowed to encroach into the Drainage and Utility Easement.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune concurs with the Applicant in finding that the Applicant's lot is a unique property. It is encumbered by three front yard setbacks. A 40 foot setback is required from Bynum Road which leaves very little buildable area to the rear of the Applicant's property.

The shed proposed by the Applicant is very similar to other sheds in the area. There will be no impact to the Code, and no adverse impact to any neighbor or to the neighborhood. The Department recommends approval for the variance to the Bynum Road front yard setback, with conditions.

However, Mr. McClune notes that the Department of Public Works has recommended against the variance to the Drainage and Utility Easement. There is an active force main sewer in the Drainage and Utility Easement on the Applicant's property. The Department of Public Works wants no improvements which may impair its ability to promptly respond to a leak or damage to the main and recommends against the variance. Mr. McClune believes that, accordingly, the variance to the Drainage and Utility Easement should not be granted.

No other testimony or evidence was presented in opposition.

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APPLICABLE LAW:

Section 267-26C(4) of the Harford County Code states:

“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”

Section 267-26C(1)(a)[6] of the Harford County Code states:

“Exceptions and modifications to minimum yard requirements.

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant has made a clear showing that his approximately 1/3 acre lot is unique. The lot actually fronts on three public roads: Carrollton Court (to which the Applicant's house is oriented); Bynum Road and Water Tower Drive. The property is therefore encumbered by 40 foot front yard setbacks along all three of those sides.

The Applicant wishes to erect on his property a relatively modest 12 foot by 16 foot equipment storage shed, similar in design and appearance to many others throughout his neighborhood and throughout Harford County. The Applicant has, however, little available land in which to erect such a shed without requesting a variance. The only location which is available without a variance is directly behind, and very close to, the rear wall of his home. Such a location for a shed is obviously undesirable.

The Applicant proposes to construct a shed at a corner of his lot which already contains existing mature screening. Clearly, given the nature of the impact of the front yard setback from the Applicant's property, he suffers an unusual hardship which will justify the granting of the relatively modest variance requested to the rear yard setback. As the setback which will be impaired is actually on Bynum Road, a relatively heavily traveled public road, there would appear to be no adverse impact from the granting of the setback variance.

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However, the Applicant also requests a variance to allow him to impact the County Drainage and Utility Easement which runs on the west side of his property. This cannot be granted. The Department of Public Works has indicated in a memo dated August 30, 2007 that:

“ . . . there is an existing 2 foot sanitary sewer, force main which exists within this easement. The placement of a structure over a county utility such as this must be avoided.”

As the Applicant has admitted that the shed can be located outside of the 7.5 foot Utility Easement, and presents no compelling argument for a variance, this request must be denied.

CONCLUSION:

It is accordingly recommended that the requested variance for the location of the shed in the recorded easement be denied.

It is recommended that the requested variance to locate the shed in the front yard setback along Bynum Road be approved, subject to the following conditions:

1. The Applicant shall locate the shed outside of the Drainage and Utility Easement.
2. The shed shall be located no less than 1 foot outside of the buffer strip that runs along Bynum Road as shown on the Applicant's site plan.
3. The Applicant shall obtain all necessary permits and inspections for the placement of the shed.

Date: November 27, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 27, 2007.